

Child Support Report

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SPOTLIGHT — TURNER V. ROGERS 5TH ANNIVERSARY

Turner v. Rogers — due process at child support hearings

Lisa Foster, Director, Office for Access to Justice, U.S. Department of Justice

In the child support community, [Turner v. Rogers](#) stands for the proposition that a parent does not have the right to a court-appointed attorney at a civil contempt hearing for failure to pay support, even if the consequence is incarceration. But that is most emphatically not all the U.S. Supreme Court said. Yet too often, the rest of the Turner decision is forgotten or ignored.

First, the court reiterated the well-established constitutional principle that parents cannot be incarcerated for failure to pay child support simply because they are poor. Before a judge can incarcerate a parent for nonpayment of support, the judge must find that the parent has the ability to pay the amount due. Indeed, the court called ability to pay the “critical question” at the hearing.

Second, the Supreme Court was careful to limit its decision to the facts of Mr. Turner’s case: the money was owed to the custodial parent and she was also self-represented; no government attorney was present at the hearing; the issues were not complex; and, Mr. Turner did not suffer from a disability that would make it difficult for him to represent himself. If any of those factors are present, the court may need to appoint counsel.

Third, and most significantly, the court found that the South Carolina proceeding was unconstitutional because Mr. Turner did not have a lawyer and South Carolina did not have “procedural safeguards” in place to ensure that the process was fair.

The court specified the types of safeguards that must be in place:

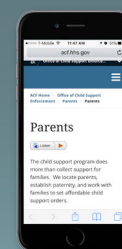
- Notice to the parent in advance of the hearing that ability to pay will be an issue;
- Use of a form to elicit financial information;
- The opportunity at the hearing for the parent to demonstrate that they do not have the ability to pay because, for example, the original order was set too high or because circumstances have changed such as the loss of a job, a rent increase, a medical emergency, or any of the myriad other events that can cause financial stress; and
- The judge has to make an express finding — on the record — that the parent has the ability to pay.

To satisfy the due process clause of the Constitution, procedural safeguards must be in place. Without them, no parent can be jailed for nonpayment of support.

The court recognized in Turner that 70 percent of child support arrears are owed by parents with either no reported income or income of \$10,000 a year or less. Thus, ability to pay will be a question at most enforcement hearings — and procedural safeguards are necessary to ensure that those hearings are constitutional.

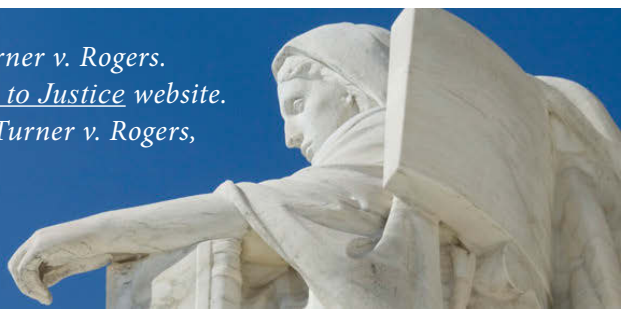
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**OCSE
website
goes
mobile!**

June marks the fifth anniversary of *Turner v. Rogers*. For more information, visit the [Access to Justice](#) website. For federal child support guidance on *Turner v. Rogers*, read [OCSE Action Transmittal 12-01](#).



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Fatherhood

How did your father influence your life's path? My father taught me that I could think for myself and solve problems if I tried. He expected me to achieve.

Fathers matter to their children. In fact, research says that father-child relationships influence children as much as mother-child relationships.

Fathers influence their children in different ways than mothers. Babies who interact with their fathers tend to acquire language skills more readily. Children whose fathers spend time with them do better in school, have more self-control, and are more ambitious and willing to embrace risk. Teens who feel close to their fathers start having sex later.

Fathers are more involved with their children than ever before. The roles of mothers and fathers are converging. Most families with children have two incomes and share in the care of their children. And more fathers provide the primary care of their children. The research says that African-American fathers are more likely to physically care for their children and prepare meals for them than other fathers. Most nonresident fathers maintain contact with their children, and many are involved with their children's daily activities. Nonresident fathers who have jobs are more likely to be involved with their children. An equal number of moms and dads say that parenting is rewarding and central to their identity.

So what happens when a father is incarcerated? Emerging research finds that when fathers are sent to jail or prison, their children pay the price. And this is particularly true of sons. Sons of incarcerated fathers tend to show more aggressive behavior and attention problems. Children of incarcerated fathers have more contact with the child welfare system.

The negative impact of incarceration on child well-being goes beyond parental separation of other kinds. Incarceration adds a barrier to employment and diminishes earnings potential. Incarceration can reduce a father's ability to work, earn and pay child support after release. Incarceration also negatively impacts the relationship between the parents. It can break up families. When a father or mother goes to prison, a child's path is changed forever.

We work in child support to help kids. Let's put the needs of children first in our daily case decisions.

Vicki Turetsky

Research

The following articles have more information on fathers and fatherhood:

- The Pew Research Center: [6 facts about American Fathers](#)
- Live Science: [The Science of Dad: Engaged Fathers Help Kids Flourish](#)
- American Psychological Association: [The Changing Role of the Modern Day Father](#)
- The Annie E. Casey Foundation: [A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities](#)
- Demography: [Beyond Absenteeism: Father Incarceration and Child Development](#)

Helping young fathers

The [Office of Adolescent Health](#) (OAH) also has new releases that will help professionals who serve young fathers and their families. OAH designed these resources to help programs reach and engage more young fathers; influence research, practice, and policy to better address their needs; and improve the lives of young fathers and their families. They include:

- [Recruiting Young Fathers: Five Things to Know](#)
- [Retaining Young Fathers: Five Things to Know](#)
- [Serving Young Fathers: Important Things to Know and How They Make a Difference](#)
- [Serving Young Fathers: An Assessment and Checklist for Organizations](#)
- [Serving Young Fathers: A Workbook of Program Activities](#)

Procedural justice in child support

Michelle Jadczyk, OCSE



Procedural justice — sometimes referred to as procedural fairness — is a term you have probably heard once or twice, but did you know that the concept has the potential to increase parents' participation in the child support process? It could even improve payment rates. According to an article by [Emily Gold](#) of the Center for Court Innovation, procedural justice is “the idea that how individuals regard the justice system is tied more to the perceived fairness of the process and how they were treated rather than to the perceived fairness of the outcome.”

Dozens of studies conducted in criminal and civil legal proceedings, including family law, show that when individuals believe the process and outcome are fair, they are more likely to accept decisions made by courts and other public authorities, and they are more willing to comply in the future.

If your child support program focuses on procedural justice strategies, you may see more reliable payments because the parent will feel that your office arrived at the outcome fairly. Reliable payments can lead to other favorable outcomes for the parent, including reduction in potential arrears, avoidance of contempt proceedings, and improved relationships with custodial parents and their children.

Not every decision goes the way a parent wants, but researchers find that people's trust and confidence in legal authorities increased when they experienced procedural justice, even if they received less than desired outcomes.

There are five widely recognized [key elements of procedural justice](#) from the litigants' perspectives:

- **Voice and Participation** — they have the opportunity to tell their side of the story and that the decision-maker takes the stories into account when making decisions;
- **Neutrality of the Process** — the decision-making process is unbiased and trustworthy;
- **Respect** — the system treats the litigant with dignity;
- **Understanding** — they understand the process and how decisions are made; and
- **Helpfulness** — they believe officials are interested in the litigants' personal situations to the extent the law allows.

By incorporating procedural justice elements into the deliberative process, courts can increase the litigants' perspective that the legal process is just and fair,

no matter the outcome. When child support offices incorporate procedural justice elements into their business practices, they may see increases in parental compliance with program rules or decisions.

Procedural justice practices may even help improve the perception of the child support program in low-income communities of color, where distrust of the child support program is high.

Many child support agencies are just beginning to examine the potential impact procedural justice innovations can have on parental engagement with the child support program, accurate order setting, payment reliability, enforcement options, contempt proceedings, and even the relationship between the noncustodial parent, custodial parent, and children.

For more information, contact Michelle Jadczyk at michelle.jadczyk@acf.hhs.gov.

The author used the following studies to develop this article:

- [The Case for Procedural Justice: Fairness as a Crime Prevention Tool](#)
- [Measuring Perceptions of Fairness: An Evaluation Toolkit](#)
- [The Social Psychology of Procedural Justice](#)
- [Procedural Justice and the Courts](#)
- [Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?](#)

“How is procedural justice different than due process?”

The two concepts are very closely related, but the concept of due process of law includes the procedural requirements that the government must provide — such as notice and opportunity to be heard — before depriving individuals of their property or liberty. The [Fifth Amendment](#) to the U.S. Constitution guarantees, “No person shall... be deprived of life, liberty, or property, without due process of law.” This applies to all states under the 14th Amendment.

Procedural justice builds on due process. It's not only concerned with respecting and meeting a person's legal rights, but also with *how* those rights are met and an individual's *perception* of the process. Incorporating procedural fairness principles is particularly important when litigants are self-represented and are unable to afford an attorney.

Importance of procedural justice protections

Barbara Addison and Barbara Lacina, OCSE

On March 14, 2016, the Justice Department issued a [Dear Colleague Letter](#) (DCL) announcing resources that could be helpful to child support professionals addressing the legal obligations state and local courts must use when determining a person's or parent's ability to pay fees and fines, bail or bond, and child support. It also highlighted the most common practices that run counter to the U.S. Constitution and other federal laws, such as incarcerating individuals for nonpayment without determining their ability to pay. The DCL went on to discuss the importance of due process protections such as notice and, in appropriate cases, the right to counsel; the need to avoid unconstitutional bail practices; and concerns raised by certain private probation arrangements.

The reform conversation

In December 2015 the Justice Department and the White House convened a group of academics and federal- and state-level legislative and judiciary officials to tackle these tough issues. Panel members discussed and planned reforms that would ensure that government-imposed financial obligations would not create or worsen poverty, or force parents into the justice system. The DCL outlined the meeting's key issues and solutions, including: indigency and ability to pay, using court processes as revenue generators, alternatives to incarceration, judicial training, amnesty programs, bench cards, access to counsel, and overcriminalization.

Protection of individuals' rights and avoiding unnecessary harm

The DCL discussed the following set of basic constitutional principles relevant to the enforcement of fines and fees, and specifically stated that these constitutional principles also apply when enforcing child support nonpayment and assessing purge amounts when taking civil contempt actions against parents. See the handout on page 10 for details on each principle listed below.

- Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.
- Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.
- Courts must not condition access to a judicial hearing on the prepayment of fines or fees.

- Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.
- Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.
- Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.
- Courts must safeguard against unconstitutional practices by court staff and private contractors.

Justice Department officials have a strong interest in ensuring that state and local courts provide every individual with the basic protections guaranteed by the Constitution and other federal laws, including Title VI of the Civil Rights Act, regardless of the person's financial means. They are eager to build on the December 2015 convening about these issues by supporting efforts at the state and local levels, and they are looking forward to working collaboratively with all stakeholders to ensure that every part of our justice system provides equal justice and due process.

OCSE encourages child support agencies to work closely with your court officials and judges by discussing the Justice Department's DCL and OCSE DCL-16-05, especially as it applies to enforcing child support delinquencies in civil contempt proceedings.

For more information, read [Justice Department Announces Resources to Reform Practices](#) (OCSE [DCL 16-05](#)), and review both the [Department of Justice Resource Guide](#) and the [Basic Constitutional Principles Relevant to the Enforcement of Fines and Fees](#) handout on page 10.

Grant opportunity closing July 8!

OCSE posted two grant opportunities for the Procedural Justice Informed Alternatives to Contempt Demonstration: one for [up to nine demonstration project grants](#) and the other for a [single evaluation award](#) to manage the evaluation of the project grants. State and tribal child support agencies can apply by July 8. Section 1115 grants are eligible for Federal Financial Participation matching funds.

Supporting fathers — not just in June

James Murray, OCSE

The Office of Child Support Enforcement recognizes the indispensable role that fathers play in their children's lives. We actively partner with various programs to identify and implement ways to collaborate, expand knowledge, and leverage resources to serve fathers and their families better.

For example, we have an ongoing partnership with ACF's Office of Family Assistance to connect responsible [fatherhood grantees](#) to their local child support offices. By strengthening these connections, we aim to increase positive outcomes for parents and their children. Such partnerships help fathers learn to be better parents, successfully navigate the child support system, and stay engaged with child support offices to maintain appropriately sized payments as consistently as possible. The [Fathers Building Futures](#) program in New Mexico helps justice-involved fathers learn to be better dads, and provides job training services. When the men reenter their communities, the noncustodial fathers have productive work to help them take care of their children.

We partner with the U.S. Department of Veterans Affairs and the American Bar Association so we can address the unique challenges that [military and veteran parents face](#). These can include frequent deployments, [veteran homelessness](#), health issues, unemployment, debt, and more. Our goal is for the child support program to be flexible and responsive to the needs of veteran and military families.

Partnerships like these have helped in numerous ways. Fatherhood training programs have fostered healthy parental relationships. We have improved child well-being because job assistance programs have helped parents find employment. We want to continue these partnerships to ensure that fathers are involved in the lives of their children and can care for their short- and long-term needs.

Annual fathering conference features mental illness discussions

Rochelle Phillips, OCSE

The 2016 New England Fathering Conference, titled "Journey to Excellence — Strengthening A Father's Legacy," included 400 fathers, caseworkers, clinicians, court magistrates, and program providers and managers who shared information and tools to promote better parenting and help build supportive social services programs.

This year was special for me because I was a member of the planning committee. I helped choose the conference theme, workshop offerings, and panelists from among state representatives. I also arranged to have a keynote speaker address the topic of mental illness. We wanted to highlight mental illness because it touches the lives of many fathers in the child support system.

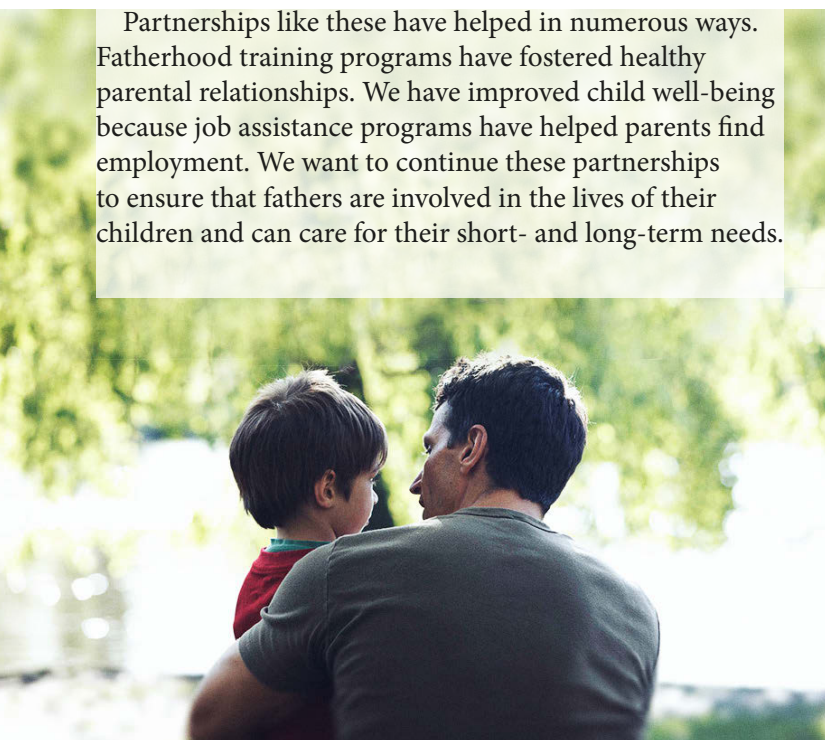
Through the years, I have heard many courageous fathers tell stories about relationship drama, confrontations they had with child support offices, and problems they encountered during court proceedings or with probation officers. During the conference, some let down their guard to share secrets about homelessness, hopelessness and the bouts of depression they suffered.

The keynote speaker, Boston attorney Joe Feaster, Jr., shared his own experience with a family member's mental illness. His personal account of his son's struggles and subsequent suicide brought the issue to light in a powerful way. The audience was visibly moved by his journey; I saw heads nodding in agreement and tears filling the eyes of many.

Later, during Feaster's workshop, participants listened intently as he answered questions about his son's passing. One person after another shared painful, yet passionate, stories of their loved ones' experiences battling with and surviving mental illness.

I was pleased with the responses to the keynote address and workshop; the topic of mental health had resonated with many attendees. Being a member of the child support community, I know that not all fathers are unwilling to meet their financial obligation. Some are willing but unable, perhaps due to post-traumatic stress, depression, bipolar disorders, or other barriers related to mental illness. People often overlook mental illness, but child support staff can change that. Help shed light on mental illness as we work to improve the lives of the children and fathers we serve.

For information on the New England Fathering Conference, contact Rochelle Phillips at rochelle.phillips@acf.hhs.gov.



Ohio county coordinator for dads

Mike Newsom, Social Program (Fatherhood) Coordinator, Dept. of Job & Family Services, Montgomery County

In 2010, Ohio noncustodial parents said that the Montgomery County Department of Job and Family Services did not meet their needs well. The office responded by creating a fatherhood coordinator position and chose me to fill the role because of my experience as a child support supervisor and outreach coordinator.

As the fatherhood coordinator, I generally help fathers with issues that are often unique to them. Men do not usually discuss legal assistance, parenting time (visitation), or their employment issues with the Job and Family Services agency. The discussions often start and end with, “Pay your child support.” I try to offer a more holistic approach, one that will let dads know that rights come along with their responsibilities.

I engage with parents in various ways. The three most prominent are through phone calls and meetings with agency walk-ins, during community outreach events at partner agencies and schools, and when I attend court proceedings.

Direct contact

Ohio considers Montgomery County a metro county. With the fourth-highest population and fifth-highest child support caseload, I get about 100 direct calls or walk-ins each month. My services generally focus on clients’ inquiries, along with helping them modify their child support obligations and removing the block that the Child Support Enforcement Agency imposed on their license. I find it helpful to have my Fatherhood Coordinator office in the agency because I have immediate access to our tracking database so I can do tasks quickly, like reinstating an obligor’s driver’s license or finding the name of the father’s caseworker.

Community outreach

Not only can I speak to fathers one-on-one at partner agencies, but I can also educate the agencies on fatherhood concerns and give them tips about how they can be more father-friendly. For example, when I speak at child development centers and public schools, I remind the staff that they need to mention to their students that their fathers are welcome at their facilities. Teachers are predominantly female and in a city like Dayton, where single parents lead approximately half the households, it is very easy to fall into language such as, “Tell your mom we are having pizza night on Friday.” A young child might assume dad is not invited, especially if he does not live with the child. Changing the language and atmosphere — magazines in the lobby, posters on the wall — are key factors in making fathers more

welcome and making their kids know they are welcome. I can be a much-needed liaison for agencies that are less comfortable talking to men.

The court system

Fortunately, Montgomery County has judges and magistrates that seek alternatives to incarceration for the defendants that come before them. The Juvenile Court child support imposition docket and Federal Drug Reentry Court are two examples. Instead of imposing sentences, the imposition docket gives obligors (mostly fathers) the opportunity to work with me because I am present at the hearings. In reentry court, I sit on a panel of community agency representatives that provide wrap-around services for returning citizens.

While there are non-profit agencies, church groups, and other concerned citizen-formed entities helping fathers in various communities, having a fatherhood coordinator that is an actual employee of Job and Family Services provides clients direct access to case information — child support, public assistance, Child Protective Services — that other agencies cannot offer.

My knowledge and connections are superior. I have close relationships with decision-makers such as judges and other high-ranking government officials who can shape policy and practices that make being a noncustodial parent less difficult. In that same vein, I have easy access to the policies and procedures that are already in place so I can tell fathers how to navigate the system. As a government employee, I get the information firsthand as part of my daily work.

Client feedback suggests that our model is successful. Not only do parents appreciate the information and casework they receive, but many fathers are also pleasantly surprised to have a positive experience with “the system” after years of negative encounters that led to an adversarial relationship. This enlightened view of Job and Family Services will undoubtedly make fathers more likely to engage with the agency and less likely to “go underground.”

For more information, contact Mike Newsom at 937-496-7569.



Earlier this year, local Montgomery County agencies and businesses treated returning fathers and their children to a “We the Fathers” banquet. Here are a few of the proud families.

Customer service at the federal level

Phyllis Jones, OCSE



Did you know that OCSE, located in Washington, DC, has a Customer Service Branch? It is the key point of contact for OCSE's child support program customer inquiries. We investigate and provide timely responses to the inquiries we receive from parents, grandparents, and other relatives with a child support case. We receive written, electronic, and telephone assistance requests directly from parents and indirectly through members of Congress, the HHS Office of the Secretary, the Office of Inspector General, and the OCSE Tipline. You may be surprised to learn that we even receive requests from the White House because many people write directly to the president about their child support concerns.

Responding to inquiries is a nationwide team effort. The branch can answer the majority of general questions about the child support program with our collective knowledge about federal and state policies and procedures. However, we do not maintain individual case files, nor do we have access to state databases containing individual case information. We rely heavily on our state and U.S. territorial child support contacts to give us case-specific and accurate information to share with the customer.

We also work closely with the OCSE regional program staff, the liaisons between the federal and state contacts. The regional staff play an important role in resolving escalated, complex inquiries, especially intergovernmental/interstate cases where there might be conflicting information coming from multiple state agencies. Their vast knowledge of the child support programs in their areas is extremely useful. They help us improve our knowledge base of state child support programs. We also consult with staff from various OCSE divisions to learn more so we can resolve customers' inquiries quickly and thoroughly.

Not all inquiries are complex, but they do involve a variety of issues. These are some of the most common topics:

- Unpaid child support payments;
- Unmanageable court order obligations;
- Disputes over arrears balances;
- Failures of courts or agencies to take enforcement actions; and
- Custody and visitation agreement problems.

When we respond to requests, we provide a case status update written in plain language to help customers understand the child support program and processes. We also explain the next steps they need to take in the case

and encourage them to continue to communicate directly with their state and local offices to resolve their issues. We include state contact information and, if necessary, referrals to family-centered resources for issues that are not child support-related.

Sprinkled amidst the more simple fixes are the complex inquiries that sometimes involve people on federal, state, and local levels. In one case, we were able to help facilitate a better arrears repayment plan between two parents, which changed a \$10 per month payment into an offer to pay two-thirds of the balance due — about \$20,000. In another success story, we helped a state resolve a request to reimburse a parent whose tax offset had incorrectly gone to the other parent.

The branch does not handle every inquiry that comes to our attention. We have the help of our sister divisions in OCSE. Our colleagues in the Division of Policy and Training respond to international inquiries. Our counterparts in the Division of Federal Systems respond to tax offset and passport denial questions. The federal tribal coordinator responds to cases involving tribal inquiries.

We track and maintain records of our customer inquiries in our automated Customer Inquiry Management system. It gives central office and regional customer service specialists access to real time information. Having access to historical information is helpful when determining if we have already addressed the same concern in the past with the customer.

We store the following data:

- The original inquiry and communications related to it;
- Our official response;
- The customer's role (custodial/noncustodial parent, grandparent, elected official, etc.);
- The type of case (in-state or interstate);
- The inquiry category (enforcement, modification, custody/parenting time, etc.); and
- Our mode of contact (email, letter, fax, White House, etc.).

The little daily successes matter the most — explaining how the child support program works, listening and empathizing with the customer, or simply providing a local agency phone number. These are the positive outcomes we deliver every day. We value the strong partnerships we have with staff in the regional, state, and local offices, and recognize the efforts we all make to provide quality customer service.

For more information on the federal Customer Service Branch, contact Shawyn Drain, at Shawyn.Drain@acf.hhs.gov. To request additional assistance with your individual child support case, [please follow these steps listed on the OCSE website](#).

In Memoriam

With deep sadness, we report that Phyllis Jones passed away in early June just after drafting this article. Phyllis worked for OCSE for many years and for the Office of Head Start and other community support organizations throughout her career. She was a bright light in our office and we will miss her dearly. We dedicate this month's Child Support Report to Phyllis.



TECH FOCUS

Tribal Child Support Budget Toolbox

Lisa White, OCSE



The tribal child support budget submission process can be difficult, time consuming, and inefficient. Tribes can spend a lot of time clarifying information and gathering missing documentation before OCSE ultimately approves a budget and provides operational funding for the tribe's child support program.

Tribes must submit their annual child support budgets by August 1. By regulation, they must include the following:

- Application and budget forms [SF-424](#) and [SF-424A](#) signed by the tribal chairman;
- Quarterly estimates of expenditures;
- Notification of whether the tribe is requesting funds for indirect costs;
- Narrative justification for each cost category; and
- A statement that the tribe will be able to meet the non-federal share.

They must also provide supporting documentation for expenses in certain cost categories. Aside from these requirements, there is no standardization of the tribal child support budget process. Almost every budget submitted by the 59 comprehensive tribal child support programs is different, which makes reviewing them challenging, tedious, and time consuming.

In the past, tribes would mail paper copies of budgets to the Office of Grants Management (OGM) who would review the tribal budgets without OCSE input. In 2011, OCSE and OGM began coordinating review of tribal budgets.

Beginning in 2015, OCSE gave tribes the option of using GrantSolutions, a software tool that allows the tribe to input budget information, upload documents, and share the package with OGM and OCSE electronically. These were great improvements, but we decided we could do better.

To help eliminate the frustration many tribal programs experience during budget season, OGM and OCSE developed the [Tribal Budget Toolbox](#).

We held training webinars in May to introduce the Toolbox to tribal child support directors and fiscal staff, as well as to review policy on allowable costs. We also held a workshop at the National Tribal Child Support Association's Annual Training Conference in Tulalip, WA, in June.

continued

OCSE will add additional tools in the coming months on topics such as identifying non-federal share opportunities, tips for reducing program expenditures, and guidelines for submitting a budget amendment.

Our hope is that this new resource will minimize headaches associated with the tribal child support budget process. By standardizing submissions, OGM and OCSE will be able to review budgets more efficiently. Most importantly, the Toolbox will simplify the budget submission process so tribal child support programs will get the funds they need faster.

For more information about the new toolbox, contact Lisa White at lisa.white@acf.hhs.gov.

The toolbox includes:

- A checklist that itemizes the documents required in annual budget submissions;
- Detailed guidance explaining the information tribes must include;
- Standardized templates tribes can use to document budget information, including narrative justifications;
- Talking points for tribal child support directors to use when speaking to tribal council and finance personnel; and
- Training materials.

Child Support Report

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ANALYSIS

Analyze this: OCSE's new data blog!

The Division of Performance and Statistical Analysis (DPSA) launched a new data blog in June called [Analyze this!](#) It is our way of providing child support professionals and other stakeholders with in-depth analysis of child support data and related information so the community is well informed.

Our first blog addresses the question, "Is the percentage of custodial parents with a child support order going up or down?" We analyzed data from the Census Bureau and the child support program and offered possible explanations for the difference in trends. In upcoming blogs, we may address questions such as why the child support caseload has declined, or why poor custodial parents do not have a child support order.

Each quarter, DPSA researchers and guest bloggers will explore various topics related to child support. We welcome your ideas for future blog topics. Read [Analyze this](#) and let us know what you think!

For more information on the new data blog, contact Melody Morales at melody.morales@acf.hhs.gov.

Share your story ideas

In child support, we often share performance data, but do not regularly share success stories. Do you know of a child support success story that we could highlight? What new initiatives or improvements has your office made lately? Thanks to your contributions, the *Child Support Report* continues to be a successful tool connecting child support professionals with partners and parents. Help us expand our reach with suggestions on the topics you value most. Send a brief 2-3 sentence overview of your story idea to gretchen.tressler@acf.hhs.gov.

Basic Constitutional Principles Required in the Enforcement of Fines, Fees, and Child Support

The following information is extracted from a March 14, 2016 Justice Department DCL.

To help judicial actors protect individuals' rights and avoid unnecessary harm, we discuss below a set of basic constitutional principles relevant to the enforcement of fines and fees. These principles, grounded in the rights to due process and equal protection, require the following:

Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.

The due process and equal protection principles of the Fourteenth Constitutional Amendment prohibit “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). Accordingly, the Supreme Court has repeatedly held that the government may not incarcerate an individual solely because of inability to pay a fine or fee. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.” *Id.* at 672-73; *see also Tate v. Short*, 401 U.S. 395, 398 (1971) (holding that state could not convert defendant’s unpaid fine for a fine-only offense to incarceration because that would subject him “to imprisonment solely because of his indigency”); *Williams v. Illinois*, 399 U.S. 235, 241-42 (1970) (holding that an indigent defendant could not be imprisoned longer than the statutory maximum for failing to pay his fine). The Supreme Court recently reaffirmed this principle in *Turner v. Rogers*, 131 S. Ct. 2507 (2011), holding that a court violates due process when it finds a parent in civil contempt and jails the parent for failure to pay child support, without first inquiring into the parent’s ability to pay. *Id.* at 2518-19.

To comply with this constitutional guarantee, state and local courts must inquire as to a person’s ability to pay prior to imposing incarceration for nonpayment. Further, a court’s obligation to conduct indigency inquiries endures throughout the life of a case. *See Bearden*, 461 U.S. at 662-63. A probationer [obligor] may lose her job or suddenly require expensive medical care, leaving her in precarious financial circumstances. For that reason, a missed payment cannot itself be sufficient to trigger a person’s arrest or detention unless the court first inquires anew into the reasons for the person’s non-payment and determines that it was willful. In addition, to minimize these problems,

courts should inquire into ability to pay at sentencing, when contemplating the assessment of fines and fees, rather than waiting until a person fails to pay.

Under *Bearden*, standards for indigency inquiries must ensure fair and accurate assessments of defendants’ ability to pay. Due process requires that such standards include both notice to the defendant that ability to pay is a critical issue, and a meaningful opportunity for the defendant to be heard on the question of his or her financial circumstances. *See Turner*, 131 S. Ct. at 2519-20 (requiring courts to follow these specific procedures, and others, to prevent unrepresented parties from being jailed because of financial incapacity). Jurisdictions may benefit from creating statutory presumptions of indigency for certain classes of defendants — for example, those eligible for public benefits, living below a certain income level, or serving a term of confinement. *See, e.g., R.I. Gen. Laws § 12-20-10* (listing conditions considered “prima facie evidence of the defendant’s indigency and limited ability to pay,” including but not limited to “[q]ualification for and/or receipt of” public assistance, disability insurance, and food stamps).

Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.

When individuals of limited means cannot satisfy their financial obligations, *Bearden* requires consideration of “alternatives to imprisonment.” 461 U.S. at 672. These alternatives may include extending the time for payment, reducing the debt, requiring the defendant to attend traffic or public safety classes, or imposing community service. *See id.* In some cases, it will be immediately apparent that a person is not and will not likely become able to pay a monetary fine. Therefore, courts should consider providing alternatives to indigent defendants not only after a failure to pay, but also in lieu of imposing financial obligations in the first place.

Neither community service programs nor payment plans, however, should become a means to impose greater penalties on the poor by, for example, imposing onerous user fees or interest. With respect to community service programs, court officials should consider delineating clear and consistent standards that allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals’ work and family obligations. In imposing payment plans, courts should consider assessing the defendant’s financial resources to determine a reasonable periodic payment, and should consider including a mechanism for defendants to seek a reduction in their monthly obligation if their financial circumstances change.

Courts must not condition access to a judicial hearing on the prepayment of fines or fees.

State and local courts deprive indigent defendants of due process and equal protection if they condition access to a hearing or court proceeding on payment of fines or fees. *See Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) (holding that due process bars states from conditioning access to compulsory judicial process on the payment of court fees by those unable to pay); *see also Tucker v. City of Montgomery Bd. of Comm'rs*, 410 F. Supp. 494, 502 (M.D. Ala. 1976) (holding that the conditioning of an appeal on payment of a bond violates indigent prisoners' equal protection rights and "has no place in our heritage of Equal Justice Under Law" (citing *Burns v. Ohio*, 360 U.S. 252, 258 (1959))).

This unconstitutional practice is often framed as a routine administrative matter. For example, a motorist who is arrested for driving with a suspended license may be told that the penalty for the citation is \$300 and that a court date will be scheduled only upon the completion of a \$300 payment (sometimes referred to as a prehearing "bond" or "bail" payment). Courts most commonly impose these prepayment requirements on defendants who have failed to appear, depriving those defendants of the opportunity to establish good cause for missing court. Regardless of the charge, these requirements can have the effect of denying access to justice to the poor.

Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *see also Turner*, 131 S. Ct. at 2519 (discussing the importance of notice in proceedings to enforce a child support order). Thus, constitutionally adequate notice must be provided for even the minor cases. Courts should ensure that citations and summonses adequately inform individuals of the precise charges against them, the amount owed or other possible penalties, the date of their court hearing, the availability of alternate means of payment, the rules and procedures of court, their rights as a litigant, or whether in-person appearance is required at all. Gaps in this vital information can make it difficult, if not impossible, for defendants to fairly and expeditiously resolve their cases. And inadequate notice can have a cascading effect, resulting in the defendant's failure

to appear and leading to the imposition of significant penalties in violation of the defendant's due process rights.

Further, courts must ensure defendants' right to counsel in appropriate cases when enforcing fines and fees. Failing to appear or to pay outstanding fines or fees can result in incarceration, whether through the pursuit of criminal charges or criminal contempt, the imposition of a sentence that had been suspended, or the pursuit of civil contempt proceedings. The Sixth Amendment requires that a defendant be provided the right to counsel in any criminal proceeding resulting in incarceration, *see Scott v. Illinois*, 440 U.S. 367, 373 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), and indeed forbids imposition of a suspended jail sentence on a probationer who was not afforded a right to counsel when originally convicted and sentenced, *see Alabama v. Shelton*, 535 U.S. 654, 662 (2002). Under the Fourteenth Amendment, defendants likewise may be entitled to counsel in civil contempt proceedings for failure to pay fines or fees. *See Turner*, 131 S. Ct. at 2518-19 (holding that, although there is no automatic right to counsel in civil contempt proceedings for nonpayment of child support, due process is violated when neither counsel nor adequate alternative procedural safeguards are provided to prevent incarceration for inability to pay).

Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.

The use of arrest warrants as a means of debt collection, rather than in response to public safety needs, creates unnecessary risk that individuals' constitutional rights will be violated. Warrants must not be issued for failure to pay without providing adequate notice to a defendant, a hearing where the defendant's ability to pay is assessed, and other basic procedural protections. *See Turner*, 131 S. Ct. at 2519; *Bearden*, 461 U.S. at 671-72; *Mullane*, 339 U.S. at 314-15. When people are arrested and detained on these warrants, the result is an unconstitutional deprivation of liberty. Rather than arrest and incarceration, courts should consider less harmful and less costly means of collecting justifiable debts, including civil debt collection.

In many jurisdictions, courts are also authorized — and in some cases required — to initiate the suspension of a defendant's driver's license to compel the payment of outstanding court debts. If a defendant's driver's license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay. *See Bell v. Burson*,

402 U.S. 535, 539 (1971) (holding that driver's licenses "may become essential in the pursuit of a livelihood" and thus "are not to be taken away without that procedural due process required by the Fourteenth Amendment"); *cf. Dixon v. Love*, 431 U.S. 105, 113-14 (1977) (upholding revocation of driver's license after conviction based in part on the due process provided in the underlying criminal proceedings); *Mackey v. Montrym*, 443 U.S. 1, 13-17 (1979) (upholding suspension of driver's license after arrest for driving under the influence and refusal to take a breath-analysis test, because suspension "substantially served" the government's interest in public safety and was based on "objective facts either within the personal knowledge of an impartial government official or readily ascertainable by him," making the risk of erroneous deprivation low). Accordingly, automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process.

Even where such suspensions are lawful, they nonetheless raise significant public policy concerns. Research has consistently found that having a valid driver's license can be crucial to individuals' ability to maintain a job, pursue educational opportunities, and care for families. At the same time, suspending defendants' licenses decreases the likelihood that defendants will resolve pending cases and outstanding court debts, both by jeopardizing their employment and by making it more difficult to travel to court, and results in more unlicensed driving. For these reasons, where they have discretion to do so, state and local courts are encouraged to avoid suspending driver's licenses as a debt collection tool, reserving suspension for cases in which it would increase public safety.

Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.

When indigent defendants are arrested for failure to make payments they cannot afford, they can be subjected to another independent violation of their rights: prolonged detention due to unlawful bail or bond practices. Bail that is set without regard to defendants' financial capacity can result in the incarceration of individuals not because they pose a threat to public safety or a flight risk, but rather because they cannot afford the assigned bail amount.

As the Department of Justice set forth in detail in a federal court brief last year, and as courts have long recognized, any bail practices that result in incarceration based on poverty violate the Fourteenth Amendment. *See* Statement of Interest of the United States, *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC, at 8 (M.D.

Ala., Feb. 13, 2015) (citing *Bearden*, 461 U.S. at 671; *Tate*, 401 U.S. at 398; *Williams*, 399 U.S. at 240-41). Systems that rely primarily on secured monetary bonds without adequate consideration of defendants' financial means tend to result in the incarceration of poor defendants who pose no threat to public safety solely because they cannot afford to pay. To better protect constitutional rights while ensuring defendants' appearance in court and the safety of the community, courts should consider transitioning from a system based on secured monetary bail alone to one grounded in objective risk assessments by pretrial experts. *See, e.g.*, D.C. Code § 23-1321 (2014); Colo. Rev. Stat. 16-4-104 (2014); Ky. Rev. Stat. Ann. § 431.066 (2015); N.J. S. 946/A1910 (enacted 2015); *see also* 18 U.S.C. § 3142 (permitting pretrial detention in the federal system when no conditions will reasonably assure the appearance of the defendant and safety of the community, but cautioning that "[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person").

Courts must safeguard against unconstitutional practices by court staff and private contractors.

In many courts, the judge or magistrate may preside for only a few hours or days per week, while most of the business of the court is conducted by clerks or probation officers outside of court sessions. As a result, clerks and other court staff are sometimes tasked with conducting indigency inquiries, determining bond amounts, issuing arrest warrants, and other critical functions — often with only perfunctory review by a judicial officer, or no review at all. Without adequate judicial oversight, there is no reliable means of ensuring that these tasks are performed consistent with due process and equal protection. Regardless of the size of the docket or the limited hours of the court, judges must ensure that the law is followed and preserve "both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (internal quotation marks omitted); *see also* American Bar Association, MODEL CODE OF JUDICIAL CONDUCT, Canon 2, Rules 2.2, 2.5, 2.12.

Additional due process concerns arise when these designees have a direct pecuniary interest in the management or outcome of a case—for example, when a jurisdiction employs private, for-profit companies to supervise probationers. In many such jurisdictions, probation companies are authorized not only to collect court fines, but also to impose an array of discretionary surcharges (such as supervision fees, late fees, drug testing fees, etc.) to be paid to the company itself rather than to the court. Thus, the probation company that decides

what services or sanctions to impose stands to profit from those very decisions. The Supreme Court has “always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty.” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810 (1987). It has expressly prohibited arrangements in which the judge might have a pecuniary interest, direct or indirect, in the outcome of a case. See *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (invalidating conviction on the basis of \$12 fee paid to the mayor only upon conviction in mayor’s court); *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 61-62 (1972) (extending reasoning of *Tumey* to cases in which the judge has a clear but not direct interest). It has applied the same reasoning to prosecutors, holding that the appointment of a private prosecutor with a pecuniary interest in the outcome of a case constitutes fundamental error because it “undermines confidence in the integrity of the criminal proceeding.” *Young*, 481 U.S. at 811-14. The appointment of a private probation company with a pecuniary interest in the outcome of its cases raises similarly fundamental concerns about fairness and due process.

Department of Justice Resource Guide

The [Resource Guide](#), compiled by the Office of Justice Programs Diagnostic Center within DOJ, helps leaders make informed policy decisions and pursue sound strategies at the state, local, and tribal levels. Below are some relevant child support resources.

- [Michigan’s Ability To Pay Workgroup: Tools and Guidance for Determining and Addressing an Obligor’s Ability to Pay](#)
- [Reducing Failure to Appear in Nebraska: A Field Study](#)
- [The Criminal and Labor Market Impacts of Incarceration](#)
- [The Labor Market Consequences of Incarceration](#)
- [Repaying Debt](#)
- [Criminal Justice Debt: A Toolkit for Action](#)
- [Criminal Justice Debt: Action Kit for Web](#)
- [Georgia Public Defender Council Website](#)

